OUTBOUND DATA USE AGREEMENT

This Agreement is effective as of ________________ (the “Effective Date”), between the Massachusetts Institute of Technology, a nonprofit Massachusetts education corporation with an address at 77 Massachusetts Avenue, Cambridge MA 02139 (“MIT”), and ________________ (the “RECIPIENT”). MIT and the RECIPIENT may hereinafter be referred to individually as a “Party,” and/or collectively as the “Parties.”

In connection with MIT making confidential, de-identified data available as described herein, the Parties hereby agree as follows:

1. DISCLOSURE OF DATA. MIT provides the P2PSTORY Data Set (the “DATA”) to RECIPIENT for academic, non-profit, research purposes only. The DATA are provided at no cost.

   1.1. RECIPIENT may not further distribute DATA to others, including without limitation, to employees or representatives of RECIPIENT other than to research collaborators at other institutions including MIT, without MIT’s prior written consent.

   1.2. RECIPIENT represents and warrants that all research collaborators will be made aware of and will comply with the terms, conditions, and restrictions of this Agreement.

2. USE OF DATA.

   2.1. Subject to the terms and conditions of this Agreement, RECIPIENT may (i) use the DATA solely for academic, non-profit, research purposes only. RECIPIENT shall not use DATA except as authorized under this Agreement. MIT shall retain any rights it may have in the DATA.

   2.2. RECIPIENT agrees to use the DATA in compliance with all applicable laws and regulations.

   2.3. RECIPIENT agrees not to attempt to re-identify individuals from the DATA.

3. TERM. The Term of this Agreement commences on the Effective Date and ends on the earlier of: (i) the 30th day of June, 2021 or (ii) termination under Section 7.

4. CONFIDENTIALITY AND SECURITY.

   4.1. RECIPIENT (i) will use reasonable care, consistent with accepted industry standards, to protect the security of the DATA but in all events will ensure that the DATA are encrypted at rest and in transit; (ii) will limit access to the DATA to the RECIPIENT RESEARCHERS; (iii) will not at any time during or after the term of this Agreement disclose DATA to any other person without first obtaining MIT’s prior written consent (except as otherwise required by law in which case RECIPIENT shall, unless prohibited by law, notify MIT prior to such disclosure so that MIT may seek a protective order or similar remedy); (iv) will not present, submit for publication, publicly post or publish any information contained in or derived from the DATA without first
obtaining MIT’s prior written consent; (v) will not attempt to re-identify any de-identified DATA by any means; and (vi) will promptly notify MIT in the event of unauthorized access to or disclosure of the DATA.

4.2. Notwithstanding the foregoing, in no event is information considered DATA if it (a) was lawfully in the possession of RECIPIENT before receipt from MIT, other than under a prior agreement with MIT; (b) is or becomes publicly available through no fault of RECIPIENT; (c) is received by RECIPIENT, without restriction as to further disclosure, from a third party having an apparent bona fide right to disclose the information to RECIPIENT; or (d) can be demonstrated as being independently developed by RECIPIENT.

5. USE OF NAMES. Except as expressly authorized in this Agreement, neither MIT nor RECIPIENT may use (alone or as part of another name) any names, logos, seals, insignia or other words, symbols or devices that identify the other Party or any unit, division or affiliate of the other Party (“PROTECTED NAMES”) for any purpose in connection with this Agreement except with the prior written approval of, and in accordance with restrictions required by, the other Party. In the case of MIT, such written approval must be obtained from MIT’s Technology Licensing Office. Without limiting the foregoing, each Party shall cease all use of PROTECTED NAMES of the other authorized under this Agreement on the termination or expiration of this Agreement, except as otherwise expressly provided herein.

6. NO REPRESENTATIONS OR WARRANTIES.

6.1. All DATA ARE PROVIDED “AS IS.” MIT MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE DATA WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. RECIPIENT ASSUMES ALL LIABILITY FOR CLAIMS FOR DAMAGES AGAINST IT BY THIRD PARTIES THAT MAY ARISE FROM ITS USE, STORAGE OR DISPOTAL OF THE DATA.

6.2. IN NO EVENT SHALL EITHER PARTY, MEMBERS OF ITS GOVERNING BOARDS, OR ITS OFFICERS, EMPLOYEES, FACULTY, FELLOWS, STUDENTS OR AFFILIATES BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGES OR LOST PROFITS, REGARDLESS OF WHETHER THE PARTY WAS ADVISED, HAD OTHER REASON TO KNOW OR IN FACT KNEW OF THE POSSIBILITY OF THE FOREGOING.

7. TERMINATION.

7.1. This Agreement shall expire as of the date described in Section 3, unless extended by agreement of the Parties or terminated earlier under this Section 7. All provisions of this Agreement that are intended to survive expiration or termination of this Agreement, including but not limited to Sections 4 (“Confidentiality”), 5 (“Use of Names”), 6 (“No
Representations or Warranties”), 8 (“Notice”), and 9 (“Miscellaneous Provisions”), shall survive such termination or expiration.

7.2. RECIPIENT may terminate this Agreement without cause by providing thirty (30) days’ prior written notice to the other Party. Either Party may terminate this Agreement if the other Party breaches any material term or condition of the Agreement and fails to cure such breach within 30 days after receipt of written notice of such breach.

7.3. Upon the earlier to occur of completion of the RECIPIENT’s research involving the use of the DATA, or termination of this Agreement by MIT for material breach under Section 7.2, RECIPIENT shall destroy the DATA in its possession, and any notes, analyses, documents, or other materials in its possession containing personally identifiable information, and shall certify to MIT as to such destruction, within a reasonable time, not to exceed thirty (30) days from the earliest to occur of completion of the research, or termination or expiration of this Agreement, as the case may be (“Destruction Date”); provided, however, that RECIPIENT may retain a copy of the DATA to the extent necessary to comply with records retention obligations of a federal governmental agency or as set forth in any other sponsored research agreement. Following the Destruction Date, and to the extent permitted by law, MIT shall reasonably accommodate requests of RECIPIENT for access to the DATA for purposes of scientific validation of the research, upon the DATA requestor’s execution of a data use agreement reasonably acceptable to MIT.

8. NOTICES. Any notices to be given under this Agreement (excluding the actual provision of DATA) shall be in writing and addressed to the Parties at the address above. Notices may be delivered in hand or given by certified mail, commercial courier, electronic mail or facsimile transmission.

9. MISCELLANEOUS PROVISIONS.

9.1. Independent Contractors; Non-Exclusive. The Parties are independent contractors and do not intend that any agency, partnership, joint venture, or exclusive relationship is created between the Parties by this Agreement. Neither Party is authorized to act on behalf of the other or to incur any obligations in the name of the other. Nothing in this Agreement shall be construed as obligating the Parties to enter into any subsequent agreement or relationship.

9.2. Entire Agreement; Amendment. This Agreement contains the entire understanding of the Parties with respect to the transactions that are the subject matter hereof and supersedes all prior agreements relating to the transactions. This Agreement may be amended or modified only by a written instrument signed by an authorized representative of each Party. The terms of this Agreement govern only the disclosure and use of the DATA as defined herein and do not apply to any other exchange of data between the Parties.

9.3. Assignment. This Agreement and rights and obligations hereunder may not be assigned by either Party without the other Party’s prior written consent.
9.4. **Severability.** The provisions of this Agreement are severable. In the event any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions hereof.

9.5. **Waiver.** Any waiver of compliance with the terms of this Agreement must be in writing, and any waiver in one instance shall not be deemed a waiver in any future instance.

9.6. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together constitute one and the same instrument.

9.7. **Governing Law and Language.** This Agreement will be governed by, and construed in accordance with, the substantive laws of the Commonwealth of Massachusetts, without giving effect to any choice or conflict of law provision.

Executed as of the Effective Date:

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

Signed: _____________________________ Date: _________________

Name: ______________________________

Title: ______________________________

**RECIPIENT**

Signed: ______________________________ Date: _________________

Name: ______________________________

Title: ______________________________